

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 119 – SB 244

February 20, 2013

SUMMARY OF ORIGINAL BILL: Prohibits a recipient of public assistance from using any portion of public assistance benefits for the purchase of any alcoholic beverage, tobacco product, or lottery ticket. Public assistance is defined as money or property provided directly or indirectly to eligible persons through the Temporary Assistance to Needy Families program (TANF) or, to the extent permitted by federal law, other programs of the federal government, the state, or any political subdivision of the state administered by the Department of Human Services (the Department). A recipient of public assistance is also prohibited from withdrawing or using benefits by means of an electronic benefit transfer (EBT) transaction for the purchase of goods or services in a retail establishment that primarily sells tobacco products, a tattoo facility, a facility providing psychic services, an adult cabaret, or an establishment open to the public where liquor, wine, or other alcoholic beverages or beer are served for consumption on the premises. Upon the first violation, the person will be disqualified from receiving public assistance benefits by means of direct cash payment or EBT access card for one month. Upon the second violation, the person will be prohibited from receiving such benefits for three months. Upon a third or subsequent violation, the person will be permanently disqualified from receiving such benefits. A person who is disqualified from receiving public assistance benefits will have the right to a hearing pursuant to the Uniform Administrative Procedures Act. In addition, a person who commits any violation must reimburse the Department for the prohibited purchase or amount withdrawn or used in a prohibited location, to the extent permitted by federal law.

A person or business entity, or any agent or employee of the person or business entity, is prohibited from accepting public assistance benefits held on an EBT card for the purchase of any alcoholic beverage, tobacco product, or lottery ticket. A person or business entity that violates this prohibition is subject to the following civil penalties: \$100 for the first violation, \$500 for the second violation, and \$1,000 for a third or subsequent violation within five years. A district attorney general may bring an action to suspend the business licenses and permits of the person or business entity for one year for any violation.

The Public Assistance Integrity Fund (the Fund) is established to be used by the Department and district attorney generals for costs associated with the prevention of misuse of public assistance benefits. Civil penalties collected pursuant to violations by persons or business entities accepting public assistance benefits for a prohibited purchase will be deposited into the fund. These funds and excess revenues or interest earned by such revenues will not revert to the general fund at the end of any fiscal year. The Department is authorized to promulgate rules and regulations to effectuate the purposes of the legislation.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$13,600/One-Time
\$182,200/Recurring

Other Fiscal Impact – Civil penalties collected as a result of violations by persons and business entities will be deposited in the Public Assistance Integrity Fund. Money deposited in the fund will be allocated to the Department of Human Services (DHS) and the district attorneys to offset any costs incurred due to the provisions of the bill. It is unknown how many violations may occur and how much funding will be collected as a result. It is estimated that any fiscal support by the Fund will be in future fiscal years.

Implementation of this bill could jeopardize \$9,576,200 in federal funds. According to the DHS, the restrictions on assistance spending and EBT transactions in the proposed legislation are broader in scope than the federal restrictions enacted by the Middle Class Tax Relief and Job Creation Act of 2012. According to the DHS, under 42 U.S.C. § 609 the Department of Health and Human Services (HHS) will impose a five percent penalty on the state family assistance grant if the state is in violation of federal law. According to the HHS website, the penalty will be imposed on the fiscal year following a final decision by HHS.

SUMMARY OF AMENDMENT (003350): Deletes all language after the enacting clause. A recipient of public assistance is prohibited from knowingly using an EBT card in a liquor store as defined by federal law; at any casino, gambling casino or gaming establishment as defined by federal law; and an adult cabaret as defined in § 7-51-1102. Public assistance is defined as money or property provided directly or indirectly to eligible persons through TANF. Any person who knowingly uses an EBT card in a prohibited location must, to the extent permitted by federal law, reimburse the Department for the purchase. A recipient of public assistance is also prohibited from knowingly using an EBT card in an automated teller machine (ATM) or point-of-sale (POS) device located in a liquor store as defined by federal law; a casino, gambling casino, or gaming establishment as defined by federal law; or an adult cabaret as defined in § 7-51-1102. Any person who knowingly uses an EBT card in an ATM or POS device located in a prohibited location must reimburse the Department for any amount withdrawn and used, unless prohibited by federal law. Upon a third or subsequent violation, if permitted by federal law, the person will be permanently disqualified from receiving public assistance by means of direct cash payment or an EBT access card.

A person or business entity, or any agent or employee of the person or business entity, is prohibited from knowingly accepting public assistance benefits from an EBT card for the purchase of any goods or services in a liquor store as defined by federal law; at any casino, gambling casino or gaming establishment as defined by federal law; and an adult cabaret as

defined in § 7-51-1102. A person or business entity that violates this prohibition is subject to the following civil penalties: \$1,000 for the first violation; \$2,500 for the second violation within five years; and \$5,000 for a third or subsequent violation within five years. The Department is authorized to bring an action to enforce any civil penalty in a complaint filed in the chancery court of the county where the merchant is located. Civil penalties are required to be deposited into the general fund. A district attorney general may bring an action to suspend the business licenses and permits of the person or business entity for one year for any violation of this prohibition.

Any person or entity subject to a penalty or sanction under the proposed legislation will have the right to a hearing pursuant to the Uniform Administrative Procedures Act. The Department is required to establish a system for reviewing benefit transactions of recipients as frequently as the commissioner may determine, but not less than on a quarterly basis. The Department is required to add prohibited uses of an EBT card by rule promulgation to the fullest extent later permitted by federal law. The Department is authorized to promulgate rules and regulations, including emergency rules, to effectuate the purposes of the proposed legislation. All such rules and regulations are required to be promulgated in accordance with the Uniform Administrative Procedures Act.

The proposed legislation will take effect July 1, 2014, except that for rulemaking purposes the proposed legislation will take effect upon becoming law.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – Not Significant

Other Fiscal Impact - The Middle Class Tax Relief and Job Creation Act requires that states develop plans for preventing the use of TANF assistance through EBT transactions at locations specified by the proposed legislation by February 2014. The Department will reallocate existing TANF grant funds to implement the proposed legislation.

Assumptions for the bill as amended:

- Except for rulemaking purposes, the proposed legislation will take effect July 1, 2014.
- According to the Department, the number of appeals heard by the Appeals and Hearings Division will increase slightly due to alleged violations of the provisions prohibiting the use of funds for certain purchases and the withdrawal or use of funds at specified locations. According to the Department, no additional employees will be required for appeal processing.
- The Department will work with the outside vendor for EBT services to block EBT transactions through ATMs and point of sale (POS) terminals at prohibited locations and will build, maintain, and update a blocked terminal list. The Department will also assist

ATM owners and retailers in complying with the federal requirements and the proposed legislation.

- Enforcement actions relative to business licenses taken against owners of ATMs and retailers by district attorneys will result in a workload increase that can be accommodated within existing resources.
- Civil penalties collected pursuant to violations by persons and business entities accepting public assistance benefits for prohibited items and services will be deposited into the general fund.
- Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) requires states to prevent the use of TANF assistance in EBT transactions at specified locations (liquor stores, casinos and gaming establishments, and retail establishments providing adult-oriented entertainment). States must present a plan implementing this requirement to the federal Department of Health and Human Services (HHS) by February 2014. A state that fails to implement and maintain policies and practices necessary to prevent prohibited transactions will be penalized an amount equal to five percent of the state family assistance grant.
- As of February 20, 2013, HHS has not issued guidance or promulgated rules providing for additional funding to implement the federal requirements.
- According to the Department, the requirements that the proposed legislation imposes on the Department correspond with federal requirements and existing TANF grant funds will be reallocated to implement these requirements.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Lucian D. Geise'.

Lucian D. Geise, Executive Director

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